(2)

No. 04-329

Supreme Court, U.S.
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In The

Supreme Court of the United States

JAMES TALLY, *et al.*,

Petitioners,

v.

W.A. DREW EDMONDSON,
Attorney General of Oklahoma, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The Oklahoma Supreme Court

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

In November, 2002, Oklahoma voters passed the Anti-Cockfighting Law which had been placed on the ballot via Initiative Petition No. 365. Although Petitioners set out at some length the numerous proceedings that were conducted concerning the validity of the signatures filed with that Initiative Petition, they concede that no review of the Orders issued is before this Court. Petitioners failed to petition for a Writ of Certiorari in that case.

Immediately following the certification of the 2002 November election results, cockfighting proponents began filing applications for temporary restraining orders to bar the enforcement of the law. Defendants included the district attorneys and sheriffs in the counties, as well as the Oklahoma State Bureau of Investigation. They further challenged the constitutionality of the new law upon numerous grounds. Only those counties where the question of the Anti-Cockfighting Law had failed were targeted.

When over twenty-five (25) Petitions had been filed in over twenty-five (25) different counties, the Oklahoma Attorney General filed an Application to Assume Original Jurisdiction and Petition for Declaratory Relief on January 15, 2003. Petitioners then filed their application to recuse the Oklahoma Supreme Court Justices *en banc* based upon the Court's rulings in the proceedings concerning the Initiative Petition. The Court appointed a Referee to conduct hearings on the application to recuse.

Vice-Chief Justice Opala disqualified when Petitioners' filed an additional application to disqualify him citing a newspaper article in *The Daily Oklahoman* that listed Justice Opala as one of the individuals who had attended a

trip to celebrate the paper's anniversary. *The Daily Oklahoman* supported the Anti-Cockfighting Law. Justice Summers did not participate and Justice Edmondson disqualified due to his relationship with Attorney General Edmondson.

Petitioners were allowed to present both documentary and testimonial evidence at the disqualification hearing. They issued a subpoena to Justice Opala who appeared and answered questions which were not prohibited by judicial immunity. The Oklahoma Supreme Court determined that Petitioners were unable to present any legal reasons that the remaining Justices should recuse.

On March 30, 2004, the Oklahoma Supreme Court issued an Opinion accepting original jurisdiction and declaring the Anti-Cockfighting Law to be constitutional. The Petition for Rehearing was denied. Petitioners are now before this Court on a Petition For Writ Of Certiorari To The Oklahoma Supreme Court. Petitioners allege that they were denied due process in the disqualification hearing and that the Anti-Cockfighting Law is unconstitutional.

REASONS FOR DENYING THE WRIT

The grant of certiorari is inappropriate to consider. First, Petitioners' complaints are based on the Oklahoma Supreme Court's denial of their motion to disqualify the entire membership of the Oklahoma Supreme Court, which was mainly based on Petitioners' allegations of incorrect, adverse decisions by the Court in a previous case. When there is no pecuniary, direct, personal or substantial interest, there is no extra-judicial prejudice.

Petitioners were granted a full and fair hearing on their complaints. Petitioners failed to apply for a Writ of Certiorari in the previous case.

Contrary to Petitioners' allegations that the Justices have ignored the precedents of State and Federal law concerning disqualification, the Oklahoma Supreme Court has had three Justices recuse or disqualify during the pendency of the case – Justice Summers, Justice Opala and Justice Edmondson. The Justices' decisions on the recusal issues are findings of fact and should not be considered by this Court. U.S. S.Ct. Rule 10. The granting of certiorari is inappropriate in regards to the Oklahoma Supreme Court's decision that the Anti-Cockfighting Law is constitutional. The Oklahoma Supreme Court determined that the attacks on the law were without merit and in doing so applied the correct standards.

I. The Oklahoma Supreme Court Based Its Decision To Refuse To Disqualify Upon Well Established State And U.S. Supreme Court Precedent.

A. No direct, personal, substantial or pecuniary interest can be attributed to the sitting Justices.

Petitioners argue that the Oklahoma Supreme Court failed to apply the standards in *Pierce v. Pierce*, 39 P.3d 791 (Okla. 2001) when it denied the Application to Recuse the Justices of the Oklahoma Supreme Court. Petitioners further claim that the Oklahoma Supreme Court ignored this Court's holding in the *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1986) case. This argument is without merit as the Oklahoma Supreme Court cited these cases in

its Order denying the Application to Recuse the Justices of the Oklahoma Supreme Court. (Petitioners' App. 135.)

The facts in *Aetna*, wherein this Court vacated the decision of the Alabama Supreme Court, are distinguishable from the instant case. In *Aetna*, when appellant insurer refused to pay the full amount of a hospital bill incurred by appellees, they brought suit in an Alabama state court, seeking payment of the full amount and punitive damages for appellant's alleged bad-faith refusal to pay a valid claim. The jury awarded $3.5 million in punitive damages. The Alabama Supreme Court affirmed, 5 to 4, in a *per curium* opinion written by Justice Embry. Appellant filed an application for rehearing. Before the application was acted upon, Appellant learned that while the case was pending before the Alabama Supreme Court, Justice Embry had filed two actions in an Alabama court against insurance companies alleging bad-faith failure to pay claims and seeking punitive damages. One of the actions was a class action on behalf of all state employees insured under a group plan by Blue Cross and Blue Shield. Appellant filed motions challenging, on due process grounds, Justice Embry's participation in the *per curiam* decision and his continued participation in the case. Appellant also alleged that all justices on the court should recuse themselves because of their interests as potential class members in the Blue Cross suit. The Alabama court denied both motions. *Id.* at 813, 814.

This Court, in considering the due process challenge, determined that only in the most extreme of cases would disqualification on the allegations of bias or prejudice by a judge ever be sufficient under the Due Process Clause to force recusal. This Court found that "allegations of bias and prejudice on this general basis, however, are insufficient to

establish any constitutional violation." *Id.* at 821. This Court determined that there was no basis for concluding that the justices of the Alabama Supreme Court other than Justice Embry were disqualified under the Due Process Clause. While those justices might conceivably have had a slight pecuniary interest in this case because of their possible inclusion in the Blue Cross class action, that interest cannot properly be characterized as "direct, personal, substantial, [and] pecuniary." This Court determined that because of Justice Embry's leading role in the decision under review, the "appearance of justice" would best be served by vacating the decision and remanding for further proceedings. *Id* at 828.

Petitioners' allegation that Justice Opala's disqualification could somehow affect their due process rights is wholly unsupported by fact. Justice Opala disqualified and took no part in the decision in *Edmondson v. Pearce*, 91 P.3d 605 (2004), unlike Justice Embry in *Aetna*. Justice Opala disqualified based upon the "appearance of impropriety," not because of any wrongdoing or bias. (Petitioners' App. 125.) To intimate that he influenced the other Justices' decision in *Edmondson v. Pearce* when he didn't join in the deliberation is absurd. None of the remaining Oklahoma Justices can be characterized as having a direct, personal, substantial or pecuniary interest in this case. Petitioners' arguments are insufficient to invoke the scrutiny of this Court.

B. There is no evidence that the Justices have personal knowledge of disputed evidentiary facts gained in an extrajudicial capacity.

In the instant case, Petitioners have alleged only general accusations of bias and prejudice against the

seven sitting Justices. The facts in an application to recuse must allege extra-judicial bias.

Personal knowledge of disputed evidentiary facts gained in an extrajudicial capacity is grounds for recusal. *United States v. Heldt*, 668 F.2d 1238, 1274 (D.C. Cir. 1981). Bias "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966). Petitioners' argument is totally devoid of any specific factual allegations of an extrajudicial source of personal knowledge of disputed facts on the part of any of the sitting Justices.

Petitioners claim that the Oklahoma Supreme Court's adverse rulings in *In re Initiative Petition No. 365, State Question No. 687*, 2001 OK 98, 55 P.3d 1048 are the basis for their allegations of bias and prejudice in this case. Adverse rulings do not form a basis for disqualification. *Robertson v. Humphries*, 708 P.2d 1058, 1061 (Okla. 1968). Many of Petitioners' allegations are without reference to the record or other documentation.

C. The question of whether a judge's impartiality can be reasonably questioned is to be made in light of facts as they existed, not as they were surmised.

The standard for disqualification of a judge is "would a reasonable person knowing all the facts surrounding the application for recusal harbor doubts as to the impartiality of the judge?" The decision whether a judge's impartiality can "'reasonably be questioned'" is to be made in light of

facts as they existed, and not as they were surmised or reported. Memorandum of Justice Scalia in *Richard B. Cheney v. United States District Court for the District of Columbia*, 541 U.S. ___ (2004) citing *Microsoft Corp. v. United States*, 530 U.S. 1301, 1302 (2000).

In addition, a judge has a strong duty to sit when there is no legitimate reason to recuse which is as strong as the duty to recuse when law and facts require. There is no reasonable factual basis alleging or requiring the recusal of any of the challenged Justices. *Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir. 1995). Rumor, speculation, beliefs, conclusions, innuendo, suspicion, opinion and similar non-factual matters are not sufficient to require recusal. *Id.* Petitioners' general allegations of bias and prejudice are based upon speculation and innuendo and are insufficient to require recusal.

II. The Oklahoma Supreme Court Correctly Ruled That The Anti-Cockfighting Law Is Constitutional Within The Requirements Of The Due Process Clause.

A. Oklahoma Supreme Court general standard of review – constitutionality of statute.

In its opinion declaring the Anti-Cockfighting Law to be constitutional, the Oklahoma Supreme Court cited *Fent v. Oklahoma Capitol Improvement Authority*, 984 P.2d 200, 203, *cert. denied*, 528 U.S. 1021 (1999) for the general rules concerning the standard of review applicable when a statutory enactment is attacked on constitutional grounds. *Edmondson v. Pearce*, 91 P.3d 605, ¶17 (2004) In *Fent*, the Court said:

> In considering a statute's constitutionality, courts are guided by well established principles. A heavy burden is cast on those challenging a legislative enactment to show its unconstitutionality and every presumption is to be indulged in favor of the constitutionality of a statute. If two possible interpretations of a statute are possible, only one of which wound render it unconstitutional, a court is bound to give the statute an interpretation that will render it constitutional, unless constitutional infirmity is shown beyond a reasonable doubt. A court is bound to accept an interpretation that avoids constitutional doubt as to the legality of a legislative enactment.
>
> It is also firmly recognized that it is not the place of this Court, or any court, to concern itself with a statute's propriety, desirability, wisdom, or its practicality as a working proposition. [T]he judiciary cannot challenge the wisdom, need or desirability of any constitutionally valid legislation. Such questions are plainly and definitely established by our fundamental law as functions of the legislative branch of government. Respect for the integrity of our tripartite scheme for distribution of governmental powers commands that the judiciary abstain from intrusion into legislative policymaking. A court's function, when the constitutionality of a statute is put at issue, is limited to a determination of the validity or invalidity of the legislative provision and a court's function extends no farther in our system of government. *Id.* (Citations omitted)

(Petitioners' App. 16, 17.)

The Oklahoma Supreme Court did not concern itself with the desirability of the law in this case. They limited their judicial function to determining the validity or

invalidity of the law. As such, Petitioners have not been denied due process of law.

B. Petitioners assert the definition of "cockfight" or "cockfighting" is unconstitutionally vague and overbroad in failing to distinguish between innocent conduct and alleged harmful conduct.

The Oklahoma Anti-Cockfighting Law defines "cockfighting" as "a fight between birds, whether or not fitted with spurs, knives, or gaffs, and whether or not bets or wagers are made on the outcome of the fight, and includes any training fight in which birds are intended or encouraged to attack or fight with one another." 21 O.S. § 1692.1(A) (Petitioners' App. 3, fn. 1.)

Petitioners urge this Court to look at the definition only as a "fight between birds." When the definition is read in context, it is clear that cockfighting and training fights are the prohibited acts. Numerous animal fighting/cockfighting laws contain the term "birds."

The federal statute prohibiting animal fighting utilizes the term "live birds" 7 U.S.C. § 2156 (Petitioners' App. 42-45.) Other states use the term "bird" in their statutes which prohibit cockfighting. A small sample follows: California Penal Code § 597C: Fighting animals or birds – Whoever owns, possesses, keeps or trains any bird or animal, with the intent that such bird or animal shall be engaged in an exhibition of fighting, or is present at any place, building or tenement, where preparations are being made for an exhibition of the fighting of birds or animals, with the intent to be present at such exhibition or is present at such exhibition is guilty of a misdemeanor;

Colorado Rev. Stat. Ann. § 18-9-204: Killing Animals or Birds in Contest – It is unlawful for any person to advertise offer to conduct or conduct, or otherwise promote any contest or competition involving two or more persons when the object of the contest or competition is the killing of animals or birds; D.C. Code Ann. § 810: Any person who sets on foot, instigates, promotes, carries on or does any act, as assistant, umpire, or principal, or attends or in any way engages in the furtherance of any fight between cocks, fowls, or other birds, or dogs, bulls, bears, or other animals, premeditated by any persons owning or having custody of such birds or animals, is guilty of a misdemeanor.

In *Edmondson v. Pearce*, *supra*, the Oklahoma Supreme Court correctly held:

> although Respondents criticize the law for broadly encompassing 'all birds' instead of specifically limiting its prohibition to the fighting of 'cocks,' that no authority is cited in support of the premise that the category of 'all birds' is somehow constitutionally suspect. Respondents fail to illustrate how the sweep of a statutory category of birds renders the Act vague and/or how it impinges on First Amendment rights or otherwise infringes upon constitutionally protected conduct. Instead, they attack the definition generally because it 'fails to make any distinction between normally proper and allegedly improper behavior' and therefore 'invites, encourages and supports law enforcement abuses that will infringe upon the lives of every citizen who has traditionally enjoyed the nature of all birds, including their natural fights for food, or for survival.'

In our view, the Act is notably absent any language (such as discretion to law enforcement officers to determine whether a violation of the statute has occurred[1]) that would suggest law enforcement application in any way other than evenhandedly, and Respondents fail to persuasively demonstrate how the Act, as written, invites law enforcement abuse. Rather, '[t]he language of the [statute] is sufficiently clear that the speculative danger of arbitrary enforcement does not render the [statute] void for vagueness.' *Village of Hoffman Estates v. Flipside Estates, Inc*, 455 U.S. 489, 503 (1982).

The Supreme Court has stated 'the mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge.' *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984). Further, with respect to vagueness challenges, the Supreme Court has provided "'it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest.'" *Broadrick v. Oklahoma*, 413 U.S. 601, 608 (1973), quoting *U.S. Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 578-78 (1973).

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[1] The criminal provision in *Kolender v. Lawson*, 461 U.S. 352 (1983), was struck down as "unconstitutionally vague on its face because it encourage[d] arbitrary enforcement by failing to describe with sufficient particularity what a suspect must do in order to satisfy the statute." *Id.* at 361.

Respondents' reliance on *City of Chicago v. Morales*, 527 U.S. 41 (1999) to support their challenge is misplaced. The legislation at issue in *Morales* was a 'loitering' provision, the definition of which was clear, but the uncertainty there was due to the ordinance's failure to specify what loitering was covered by it and what was not. In that the enactment involved in *Morales* failed to distinguish between innocent constitutionally protected conduct – 'the freedom to loiter for innocent purposes' being a part of due process 'liberty' rights – and conduct that would subject individuals to prosecution, the Supreme Court struck down the ordinance as unconstitutionally vague and overbroad. *Id.* at 53-55. Unlike the *Morales* situation, the Act here clearly and unambiguously defines the specific conduct of 'cockfight' or 'cockfighting,' which would subject individuals to prosecution. The law on its face does not criminalize the enjoyment and/or observation of the natural activities of birds in their natural habitat. Contrary to *Morales*, here Respondents have failed to identify any constitutionally protected interest at stake. Because they have failed to demonstrate how the definition of 'cockfight' or 'cockfighting' presents any 'realistic danger' that First Amendment protections will be compromised by the statutory definition, they have failed to establish the prerequisite to an overbreadth challenge. *In re Initiative Petition No. 341*, 341, 796 P.2d at 269. The statutory definition of 'cockfight' and 'cockfighting' is not unconstitutionally vague or overbroad. *Edmondson* at ¶¶50-54 (Petitioners' App. 54-56.)

C. Petitioner in this case, James Tally, the President of the Oklahoma Game Cock Breeders Association, has testified that he understands that the Anti-Cockfight Law prohibits cockfighting in Oklahoma.

Long ago, the Oklahoma Court of Criminal Appeals, recognized that the legislature in the exercise of its police power could outlaw cockfighting in Oklahoma. *Lock v. Falkenstine*, 380 P.2d 278, 284 (Okla. Crim. App. 1963). Oklahoma now has a cockfighting statute in place, a law in accordance with the due process requirements in *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Petitioners argue that it is void for vagueness. Yet, James Tally, President of the Oklahoma Game Cock Breeders Association, and other opponents of the measure have testified that they understand that as of November 8, 2002, the Anti-Cockfighting Law prohibits cockfighting in Oklahoma. (Respondents' App. 1)

Petitioners allege that the terms "instigates," "encourages," "facilitate," "performs any service", and "spectator," are so vague and standardless that they leave the public uncertain as to the specific conduct they prohibit. (Petition 29.) This statement is totally devoid of any reference to the record or supporting facts. The Oklahoma Supreme Court, however, has rejected these same arguments in *Edmondson v. Pearce*, 91 P.3d 605, ¶¶55-62, 67-76 (2004). (Petitioners' App. 57-63, 65-74.)

D. This Court does not lightly construe the Constitution so as to intrude upon the administration of justice by the individual states.

This Court held in *Patterson v. New York*, 432 U.S. 197, 201-202 (1977) (citations omitted), that

> It is normally within the power of the State to regulate procedures under which its laws are carried out . . . and its decision in this regard is not subject to proscription under the Due Process Clause unless it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.

Respondents urge this Court to allow the State to determine the procedures under which it will regulate the Anti-Cockfighting Law. The right to conduct cockfights is not a fundamental right. In fact, the federal government and 48 states have enacted some form of law prohibiting cockfighting. As the Oklahoma Supreme Court correctly held, this law does not offend any constitutional values.

CONCLUSION

Most of the Petitioners' complaints go to a decision that the Oklahoma Supreme Court made in *In Re Initiative Petition, supra*. Although Petitioners state that these proceedings are not before this Court, they give lengthy treatment in the "Background of Litigation" to that case and ask this Court to rely upon those facts to indicate bias and prejudice of the entire Oklahoma Supreme Court. Petitioners did not seek a Writ of Certiorari in that case.

Petitioners were afforded a full and fair hearing in their attempt to disqualify or recuse the entire Oklahoma Supreme Court in the proceedings in the Application to Assume Original Jurisdiction, *Edmondson v. Pearce, supra*. The sitting Justices found that there was no factual or legal basis upon which they should recuse. Due process has been served. In finding the Anti-Cockfighting Law constitutional, the Oklahoma Supreme Court correctly determined that the attacks were without merit and applied the correct standards. Therefore, Petitioners' Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Attorney for Respondent

IN THE DISTRICT COURT IN
AND FOR MCCURTAIN COUNTY
STATE OF OKLAHOMA

G. W. POYNER, et al., and others similarly situated,	)	
Plaintiffs,	)	
vs.	)	Case No. CJ-02-642
MIKE WILLEBY, Sheriff of McCurtain County, Oklahoma, et al.,	)	
Defendants.	)	

* * * * * * *

TRANSCRIPT OF HEARING
HAD ON THE 18TH DAY OF NOVEMBER, 2002
BEFORE THE HON. WILLARD DRIESEL
IDABEL, OKLAHOMA

(Filed Dec. 05, 2002)

* * * * * * *

APPEARANCES:

For Sanders and O.S.B.I.: Sherry Todd, of the Attorney General's Office, State of Oklahoma.

For the Plaintiffs: Larry L. Oliver, Attorney at Law,

For the Sheriffs of McCurtain, Choctaw and Pushmataha Counties: Virginia Sanders, District Attorney for the 17th Judicial District, Idabel, Oklahoma.

REPORTED BY:

George Lowrimore, CSR No. 279
Official Court Reporter
Idabel, Oklahoma

* * *

[21] MR. OLIVER: I have no further questions.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MS. TODD:

Q. Ms. Durant, what is your position as far as after this date that the law was effective, on November the 8th of 2002, did cock fighting – as the State of Oklahoma – in the position of the State of Oklahoma, is cock fighting legal or illegal at this point?

A. As far as the entire State of Oklahoma, it's illegal.

MS. TODD: Thank you. I have nothing else.

THE COURT: Anything else?

MR. OLIVER: No other questions.

THE COURT: All right. You can step down. Thank you.

MS. DURANT: Uh-huh.

THE COURT: Call your next witness?

MR. OLIVER: Call Ms. Cogburn.

(Whereupon, the above-named witness was duly sworn to tell the truth, the whole truth and nothing but the truth, after which the following proceedings were had:)

THE COURT: Okay. Please have a seat there.

* * *

[27] Q. Good morning, Ms. Cogburn. I'm Sherry Todd with the Attorney General's office.

A. Good morning.

Q. Uh, Ms. Cogburn, I want to clear up something that Mr. Oliver's statement has been, which is a little bit misleading. The statement is, "If this law becomes effective." Now, do you understand, Ms. Cogburn, that on November the 8th of 2002, as far as the laws of the State of Oklahoma, cock fighting is illegal in the State of Oklahoma. Do you understand that?

A. Yes, ma'am, I do.

Q. Now there is, certainly controversy as well we can all see as to whether that law is constitutional, and that – that is going to be ruled upon at some point. Do you understand that?

A. Yes, ma'am, I do.

Q. But you do understand, and it's very clear, that although the Judge has issued a Temporary Restraining Order as far as the law being enforced in this Judicial District, that as far as the laws of the State of Oklahoma are concerned, as of November the 8th of 2002, cock fighting is illegal.

MR. OLIVER: Judge, I'm going to object to that. That's a compound question and I don't understand it.

* * *

[42] Q. Mr. Hammonds, you say you understand the major concept of what this law means?

A. Yes, ma'am.

Q. What is major content of this law?

A. It make me illegal and will make me a felon.

Q. What would make you a felon?

A. To own a game cock, to talk about a game cock, or own a cage to put game cock in.

Q. At this point, after November the 8th, is it your understanding of the law that cock fighting is illegal?

A. That's right.

MS. TODD: Thank you. Nothing further, Your Honor.

THE COURT: Anything else? Just a minute. Anything else of this witness?

MR. OLIVER: Oh, no, I have nothing further.

THF COURT: Thank you. I do have a question for Mr. Hammonds? Have you ever raised fryers or chickens for human consumption?

A. No, sir, not to my knowledge.

THE COURT: All right. That's all I have. Thank you.

Okay, your next witness.

MR. OLIVER: James Talley

(Whereupon, the above-named witness was duly

* * *

[49] Q. Does Southeastern Oklahoma and the industry generally need this restraining order?

A. Yes, it does.

MR. OLIVER: Nothing further.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MS. TODD:

Q. Mr. Talley, I'm Sherry Todd with the Attorney General's office. Good morning.

A. Good morning.

Q. Tell me again your title with the –

A. I'm the President of the Oklahoma Game Cock Breaders [sic] Association.

Q. In that capacity, I would assume that you've had a lot of questions about this law and its effect upon cock fighting in Oklahoma.

A. Thousands.

Q. Uh, since November the 8th, of 2002, when the results of the vote were certified and this law came into

effect, if I were a member of your Association and called you and asked you, would it be legal or illegal or me to have a cock fight in Oklahoma, what would you tell me?

A. I would tell you it would be illegal.

* * *

[71] CERTIFICATE

STATE OF OKLAHOMA)
) ss.
COUNTY OF McCURTAIN)

I, George Lowrimore, Certified Shorthand Reporter No. 279 in and for the State of Oklahoma, do hereby certify:

That I was present and reported in shorthand the oral proceedings had in the foregoing matter, on the 18th day of November, 2002, before the Hon. Willard Driesel, District Judge for the 17th Judicial District of the State of Oklahoma, sitting in District Court in the City of Idabel, County of McCurtain, State of Oklahoma; that I have since that time transcribed all of my notes taken as aforesaid; and that the foregoing is a full, true and accurate transcript of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand on this, the 2nd day of December, 2002.

/s/ George Lowrimore
George Lowrimore,
CSR No. 279

[Stamp]